

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of California-American Water
Company (U210W) for Approval of the
Monterey Peninsula Water Supply Project and
Authorization to Recover All Present and Future
Costs in Rates.

A.12-04-019
(Filed April 23, 2012)

**SETTLING PARTIES' MOTION TO APPROVE
BRINE DISCHARGE SETTLEMENT AGREEMENT**

[SETTLEMENT AGREEMENT ATTACHED]

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I. INTRODUCTION

Pursuant to Rule 12.1(a) of the Rules of Practice and Procedure of the California Public Utilities Commission, California-American Water Company (“Cal-Am”), Monterey Peninsula Regional Water Authority (“MPRWA”), Monterey Regional Water Pollution Control Agency (“MRWPCA”), the Coalition of Peninsula Businesses, the Monterey Peninsula Water Management District,¹ Surfrider Foundation (“Surfrider”), and the Planning and Conservation League, (collectively, “the Parties”) submit this motion requesting that the Commission adopt and approve the accompanying Brine Discharge Settlement Agreement, included as “Attachment A.”

The Parties jointly support the proposed Settlement Agreement as reasonable, consistent with the law, and in the public interest. The Settlement Agreement provides for monitoring and, if necessary, mitigation of brine discharge from the Monterey Peninsula Water Supply Project

¹ Due to its board’s meeting schedule, the Monterey Peninsula Water Management District proposes to sign the Settlement Agreement after the submission of this Motion.

(“Project”) into Monterey Bay. The Agreement resolves a key contested issue in this proceeding and enjoys the support of a broad coalition of parties representing diverse interests. The Parties request that the Commission approve the Settlement Agreement without modification as part of any decision to grant California American Water a certificate of public convenience and necessity for the Project.

II. BACKGROUND

On April 23, 2012, California American Water initiated Commission proceeding A.12.04.019 (the “Proceeding”) by filing an application for a Certificate of Public Convenience and Necessity (“CPCN”) for the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates. The purpose of the Project is to replace a significant portion of the existing water supply from the Carmel River, as directed by the State Water Resources Control Board.² The Project includes, inter alia, a desalination plant and related facilities including slant intake wells, brackish water pipelines, the desalination plant, product water pipelines, brine disposal facilities, and other appurtenant facilities.

The proposed brine disposal facilities would consist of a 3 million gallon brine storage basin and a brine discharge pipeline, which would connect to a new brine mixing structure that will connect in turn to the existing MRWPCA outfall. The outfall rests on the ocean floor and terminates in a diffuser with 171 2-inch ports, 129 of which are open, spaced 8 feet apart. During the non-irrigation season (approximately November through March), Project brine would be diluted prior to discharge with treated wastewater from the MRWPCA Regional Wastewater Treatment Plant. During the irrigation season (approximately April through October), that

² State Water Resources Control Board Order Nos. WR 95-10 (July 6, 1995) and WR 2009-0060 (Oct. 20, 2009).

wastewater is diverted for irrigation and undiluted Project brine would be discharged within the Monterey Bay National Marine Sanctuary (“Sanctuary”).

On February 22, 2013, Surfrider served its opening testimony, which addressed potential impacts from brine discharges into the marine environment, as well as pending amendments to California’s Ocean Plan addressing such discharges, specifically from desalination plants.³ On May 6, 2015, the State Water Resources Control Board adopted the final Ocean Plan amendment.⁴ The Commission released the Draft Environmental Impact Report for the Project in spring 2015 (“DEIR”). Both Surfrider and MPRWA submitted comments on the DEIR’s analysis of environmental impacts from the Project’s brine discharge.

In late 2015 and early 2016, Surfrider, MPRWA, and Cal-Am engaged in discussions to develop terms of a potential settlement of contested issues related to the Project’s brine discharge. ALJ Weatherford meanwhile included brine discharge among the topics to be covered in additional testimony.⁵ These parties reached consensus on terms, which MPRWA included in its January 22, 2016 testimony.⁶

Cal-Am served notice of an all-party settlement meeting on April 29, 2016. The all-party settlement meeting was held telephonically on May 6, 2016. Settlement discussions continued through May and early June 2016.

³ See generally SF-1 (Geever Testimony); SF-2 (Letter from Victoria Whitney, Deputy Director, Division of Water Quality, State Water Resources Control Board, dated November 13, 2012); SF-3 (Jones Testimony); SF-4 (Management of Brine Discharges to Coastal Waters Recommendations of a Science Advisory Panel); SF-5 (Damitz Testimony); SF-6 (Guidelines for Desalination Plants of the Monterey Bay National Marine Sanctuary).

⁴ See Amendment to the Water Quality Control Plan for Ocean Waters of California, addressing Desalination Facility Intakes, Brine Discharges, and the Incorporation of other Non-Substantive Changes (May 6, 2015) (Ocean Plan Amendment), available at http://www.waterboards.ca.gov/water_issues/programs/ocean/desalination/.

⁵ Administrative Law Judge’s Ruling Setting Evidentiary Issues and Schedule to Complete the Record for Phases 1 and 2 (November 17, 2015).

⁶ RWA-22 (Preston Testimony, Exhibit A).

III. THE SETTLEMENT AGREEMENT IS REASONABLE IN LIGHT OF THE WHOLE RECORD, CONSISTENT WITH THE LAW, AND IN THE PUBLIC INTEREST

Pursuant to Rule 12.1(d), the Commission will approve settlements if the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. The Commission has a well-established policy of settling disputes if they are fair and reasonable in light of the whole record.⁷ This policy reduces the expense of litigation, conserves scarce Commission resources, and allows parties to “reduce the risk that litigation will produce unacceptable results.”⁸ In the *Southern California Gas Co.* decision, the Commission held that the Parties’ evaluation should carry material weight in the Commission’s review of a settlement.⁹

The record in this proceeding demonstrates that the terms of the Settlement Agreement are reasonable. The brine discharged from the project will be denser than ambient sea water. Without sufficient dilution, it could pool on the ocean floor and harm marine life in the Sanctuary.¹⁰ The Settlement Agreement establishes a monitoring program to evaluate the effect of these discharges.¹¹ Experts from Surfrider, MPRWA, and Cal-Am have developed a program to monitor salinity of the waters that will receive the Project’s discharge, which will indicate whether brine has been effectively dispersed and diluted to levels required by applicable law.¹² These experts identified preferred monitoring locations, technology, and procedures for monitoring the anticipated brine discharge.

⁷ See, e.g., *Application of Golden State Water Company on Behalf of its Bear Valley Electric Service Division (U9I3E), for Approval of RPS Contract with BioEnergy Solutions, LLC, and for Authority to Recover the Costs of the Contract in Rates*, Decision 11-06-023, 2011 Cal. PUC LEXIS 330, **17-18.

⁸ *Id.*

⁹ *Order Instituting Investigation into the operations and practices of the Southern California Gas Company, concerning the accuracy of information supplied to the Commission in connection with its Montebello Gas Storage Facility*, D.00-09-034, 2000 Cal. PUC LEXIS 694, **29, 31.

¹⁰ SF-3 at 4 (Jones Testimony).

¹¹ See Attachment A, § 3.

¹² RWA-21 at 2, 4-5 (Preston Testimony).

To determine whether brine discharge is sufficiently diluted in the receiving waters, the Settlement Agreement applies the standard proposed by the Ocean Plan Amendment: in general, the Project will be in compliance with the Settlement Agreement if salinity in the area of the outfall is not more than 2 parts per thousand (“ppt”) more saline than ambient ocean water as measured at a similar location unaffected by the Project.¹³ In the event salinity exceeds this standard, and the exceedance is determined to be a result of the Project’s brine discharge, the Settlement Agreement requires mitigation to bring the Project into compliance. The Parties will jointly select a mitigation approach to increase brine dilution and decrease salinity levels below the 2 ppt threshold.¹⁴ The record supports use of such mitigation techniques, including outfall modifications, to increase discharge pressure and brine dilution.¹⁵

The Settlement Agreement is consistent with applicable law concerning both environmental review in general and brine discharges into the marine environment. Both Public Utilities Code section 1002(a) and the California Environmental Quality Act, Public Resources Code section 21000 *et seq.*, require the Commission to consider the potential effect of the Project on the environment before issuing a CPCN. In particular, CEQA sets out California’s overarching environmental policy: “The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern,” and “[t]here is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.”¹⁶ To this end, CEQA requires agencies to analyze a project’s significant

¹³ See Attachment A, § 4; Ocean Plan Amendment at 43.

¹⁴ See Attachment A, § 4.4(a).

¹⁵ SF-1 at 5-6 (Geever Testimony); Transcript, Vol. 8 at 1259 (Svindland, Cal-Am); CA-12, Attachment 9 at 11-13 (Svindland Testimony).

¹⁶ Pub. Res. C. § 21000(a), (c).

environmental impacts prior to approval.¹⁷ When that analysis reveals such impacts will be significant, agencies must identify mitigation to reduce or avoid them.¹⁸ The Settlement Agreement will carry that commitment forward, past approval. It will require the continued monitoring and analysis of potential impacts and impose mitigation if they arise.

The Settlement Agreement also supports the purposes of the recent Ocean Plan Amendment. It applies the Amendment's 2 ppt receiving water standard and its requirement of continuous monitoring of brine discharges to ensure that standard is met.¹⁹ Federal guidelines for desalination plant operations in the Sanctuary similarly state that dischargers should dilute brine discharges and adopt a "continuous monitoring program" to evaluate impacts of such discharges.²⁰

By establishing a continuous monitoring program and contingent mitigation options, the Settlement Agreement is consistent with and promotes the purposes of each of these applicable laws and regulations. The Settlement Agreement further ensures the consistency of its terms with brine discharge regulations by allowing the Parties to modify the monitoring program to ensure compliance with any additional monitoring requirements imposed on Cal-Am and MRWPCA by other regulatory agencies.²¹

Finally, the Settlement Agreement is in the public interest. First, it reflects compromise and consensus between the Parties on a critical outstanding component of the Project. This compromise will advance the Project while conserving Commission and the Parties' resources by avoiding further adjudication of this issue. Moreover, the Settlement Agreement protects both the

¹⁷ Pub. Res. C. § 21083; Cal. C. of Regs, title 14 (CEQA Guidelines) §§ 15091, 15092.

¹⁸ Pub. Res C. § 21081.

¹⁹ Ocean Plan Amendment at 46-47.

²⁰ NOAA, Guidelines for Desalination Plants of the Monterey Bay National Marine Sanctuary (May 2010) at 6-7 (marked as exhibit SF-6).

²¹ See Attachment A, § 3.2 (discuss alternative monitoring programs).

ratepayers and the environment. It protects the ratepayers from unnecessary costs by avoiding construction of expensive and potentially unnecessary mitigation technology and allowing Cal-Am to pursue cost-effective mitigation, if and when needed.²² At the same time, it is undisputed that brine discharge into the marine environment is one of the primary environmental impacts from desalination plants.²³ Through monitoring and contingent mitigation, the Settlement Agreement pursues environmentally-protective adaptive management, thus safeguarding the public interest in California's environment.²⁴

Finally, the Settlement Agreement sets valuable policy precedent in California. To the Parties' knowledge, it will be the first investor-owned utility program to implement the Ocean Plan's monitoring standards for desalination plants. It will additionally provide the opportunity to validate the EIR's modeling and analysis of brine dilution, which may provide interesting and important insights for the analysis of future such projects.

For all of these reasons this Settlement Agreement is reasonable in light of the entire record, is consistent with the law, and is in the public interest.

IV. CONCLUSION

The Parties respectfully request that the Commission adopt and approve the attached Brine Discharge Settlement Agreement as part of any decision granting Cal-Am a CPCN authorizing it to construct the Project.

²² CA-12, Attachment 9 at 11-13 (Svindland Testimony); Attachment A, § 4.4(b)..

²³ SF-1 (Geever Testimony); SF-3 (Jones Testimony); SF-4 (Management of Brine Discharges to Coastal Waters Recommendations of a Science Advisory Panel); SF-5 (Damitz Testimony); SF-6; RWA-17 at 5-6 (Burnett Testimony).

²⁴ SF-6 at 13 (noting that such program is recommended for the Sanctuary by its administrator, the National Oceanographic and Atmospheric Administration).

DATED: June 14, 2016

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Attachment A

BRINE DISCHARGE SETTLEMENT AGREEMENT (A.12-04-019)

1. GENERAL

1.1 Pursuant to Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), California-American Water Company (“California American Water”), Monterey Peninsula Regional Water Authority (“MPRWA”), Monterey Regional Water Pollution Control Agency (“MRWPCA”), the Coalition of Peninsula Businesses, the Monterey Peninsula Water Management District, Surfrider Foundation (“Surfrider”), and the Planning and Conservation League, (collectively, the “Parties”), to avoid the expense and uncertainty of litigation of some of the matters in dispute between them before the Commission, agree on the terms of this Brine Discharge Settlement Agreement (“Agreement”), which they now submit for review, consideration, and approval by the Commission.

1.2 On April 23, 2012, California American Water initiated Commission proceeding A.12.04.019 (the “Proceeding”) by filing an application for a Certificate of Public Convenience and Necessity (“CPCN”) for the Monterey Peninsula Water Supply Project (“Project”) and Authorization to Recover All Present and Future Costs in Rates (“Application”). The purpose of the Project is to replace a significant portion of the existing water supply from the Carmel River, as directed by the State Water Resources Control Board (“SWRCB”). (SWRCB Order Nos. WR 95-10 (July 6, 1995) and; WR 2009-0060 (Oct. 20, 2009).) The Project requires, inter alia, a desalination plant and related facilities including slant intake wells, brackish water pipelines, product water pipelines, brine disposal facilities, and related appurtenant facilities.

1.3 The proposed brine disposal facilities would consist of a 3 million gallon brine storage basin and a brine discharge pipeline, which would connect to a new brine mixing structure that will connect in turn to the existing MRWPCA outfall. The outfall rests on the ocean floor and terminates in a diffuser with 171 2-inch ports 129 of which are open, spaced 8 feet apart. During the non-irrigation season (November through March), Project brine would be diluted prior to discharge with treated wastewater from the MRWPCA Regional Wastewater Treatment Plant. During the irrigation season (April through October), that wastewater is diverted for irrigation purposes and undiluted Project brine would be discharged into Monterey Bay.

1.4 The Draft Environmental Impact Report (“DEIR”) for the Project determined that the Project’s environmental impact related to brine discharge would be less than significant. The DEIR is presently under revision and will be recirculated as a combined revised draft environmental impact

report/environmental impact statement ("RDEIR/DEIS") pursuant to the California Environmental Quality Act (Public Resources Code sections 21000 et seq.) ("CEQA") and the National Environmental Policy Act (42 U.S.C. sections 4321 et seq.) ("NEPA"), with the Commission and the Monterey Bay National Marine Sanctuary (the "Sanctuary") as lead agencies. It is the Parties' understanding that the analysis of brine-related impacts may be revised as well.

1.5 Surfrider submitted comments on the DEIR challenging the assumptions and methodology supporting the DEIR's conclusions concerning the impacts of brine discharge on benthic communities and the Sanctuary ecosystem as a whole. MPRWA also submitted comments regarding the assumptions and methodology respecting impacts of brine discharge.

1.6 This Agreement, if adopted by the Commission, would provide a compromise resolution of Surfrider's concerns about marine impacts related to brine discharge. This Agreement would avoid the uncertainty of a continued challenge, based upon those marine impacts, to the adequacy of environmental review and to Commission issuance of a CPCN for the Project, without excessive costs to ratepayers.

1.7 The Effective Date of this Agreement shall be the date on which the last Party executes the Agreement. Subsequent to the Effective Date, the Parties contemplate obtaining the Commission's approval of this Agreement, and if such approval is not obtained or if the Agreement is modified by the Commission, any Party may exercise the options afforded in such circumstances by Section 6.6. Nevertheless, as of the Effective Date and continuing during the period until the Commission approves the Agreement, approves the Agreement with modifications which are agreed to by two or more Parties, or rejects the Agreement, the Monitoring Program obligations set forth in Section 3.1(c) shall be in force. In the event that the Commission approves the Agreement or approves the Agreement with modifications which are accepted by two or more Parties (unless the Agreement is void pursuant to Section 6.6), such obligations shall continue in effect pursuant to Section 3.1(c), as modified if appropriate. In the event that the Commission rejects the Agreement, such obligations shall be of no effect as of the date of the Commission's rejection. Additionally, as of the Effective Date and during the period until the Commission grants or denies the CPCN, the Parties shall abide by the procedures and obligations set out in Sections 2, 3.2(a), and 3.2(d).

2. AGREEMENT TO NOT OPPOSE BRINE DISCHARGE

Surfrider will not oppose in the Proceeding the use of the MRWPCA outfall to discharge brine from the Project desalination facility, as currently proposed in the Proceeding. Surfrider reserves the right to support or oppose other potential Project brine discharge locations and methods, including locations that have been identified as contingencies or alternatives in the Proceeding. Notwithstanding the foregoing, if any Party requests that the Commission not impose any mitigation measure

identified by a revised and recirculated DEIR to reduce or avoid the Project's environmental impacts related to brine, Surfrider may advocate for the imposition of such mitigation. Additionally, if a revised and recirculated DEIR identifies significant and unavoidable environmental impacts related to the Project's brine discharge, Surfrider may advocate for mitigation measures to reduce such impacts to less-than-significant levels.

3. MONITORING PROGRAM

3.1 Monitoring and Data Collection. California American Water shall implement a brine monitoring program (the "Agreed Monitoring Program") as follows:

a. At least one year prior to the first discharge of the Project's brine into the Sanctuary, California American Water shall install equipment required either to monitor the salinity levels in the seawater ("Salinity") by measuring the specific conductivity of the monitored seawater at intervals of no more than 15 minutes or to perform any equivalent protocol required pursuant to either an Alternative Monitoring Program (as defined in Section 3.2 below) or a standard imposed pursuant to Section 4.1(a)(B) below (the "Monitoring Equipment"). California American Water shall install the Monitoring Equipment in at least four locations (the "Monitoring Locations"). Unless modified pursuant to Section 3.2 below, the Monitoring Locations shall be within 3 meters of the ocean floor in each of the following locations, which are depicted for illustrative purposes only on Exhibit A:

- i. The Zone of Initial Dilution Location: 10 meters downslope of the outfall;
- ii. The Compliance Point Location: 100 meters downslope of the outfall;
- iii. The Far Field Location: 1000 meters downslope of the outfall, intended to measure far-field effects;
- iv. The Reference Location: 1000 meters north of the outfall, and along the same elevation contour as the outfall, which is intended to measure conditions without the influence of the outfall.

b. Commencing at installation of the Monitoring Equipment and continuing throughout the life of the Project, California American Water shall operate and maintain the Monitoring Equipment in good working order, ensuring that it is collecting and recording data at intervals of no more than 15 minutes or is performing all data collection required under an Alternative Monitoring Program, as appropriate. California American Water shall replace and maintain the Monitoring Equipment as necessary to ensure such data collection.

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c. Beginning on the Effective Date and continuing until the date that the Project begins to regularly provide customers with water from the desalination component of the Project (the "Project Commencement Date"), California American Water shall collect data on the Salinity, and any other brine constituent for which a standard is imposed pursuant to Section 4.1(a)(B) below, from each Monitoring Location no less than once each calendar month. Prior to the time the Monitoring Equipment is installed, data shall be collected from at least the following four approximate locations—on the outfall, 500 meters north of the outfall, 500 meters south of the outfall, and 1000 meters downslope of the outfall. After the Monitoring Equipment is installed, data shall be collected from each Monitoring Location. Each data collection shall include the following protocol:

i. Collect all data recorded since the last collection, or, during the period of monthly monitoring, take sufficient samples to analyze Salinity, and any other brine constituent for which a standard is imposed pursuant to Section 4.1(a)(B) below.

ii. After the installation of the Monitoring Equipment, check and re-calibrate the Monitoring Equipment's Salinity probe using standard commercial practices.

iii. Record the amount of re-calibration required.

iv. Measure and record a vertical Salinity profile, taking measurements at depth intervals of less than one meter.

d. Beginning at Project Commencement Date, California American Water shall collect data at each Monitoring Location no less than once every sixty (60) days, using the protocol described in Section 3.1(c).

e. Following each data collection, California American Water shall analyze the collected data and post the analyzed data on the Project website and/or the California American Water website. Upon posting the data, California American Water shall notify the Parties and the Commission of such posting and shall inform them of how to obtain the raw data, which it shall make freely available to any Party and the Commission. If at the later of two years after the Project Commencement Date and the close of the period of Watershed Sanitary Survey mandated by the State Water Resources Control Board's Division of Drinking Water pursuant to the California Surface Water Treatment Rule (California Code of Regulations Title 22, Division 4, Chapter 17, Article 7 - Sanitary Surveys), the 24-hour average Salinity measured at the Compliance Point Location is less than 75% of the Salinity standard specified in section 4.1 below, for 45 days without interruption, California American Water may reduce the frequency of data collection to not less than once every three months.

f. California American Water shall use commercially reasonable efforts to obtain any regulatory approvals required for the installation of the Monitoring Equipment or operation of the Agreed Monitoring Program or Alternative Monitoring Program (as defined below). The other Parties shall use commercially reasonable efforts to support California American Water's efforts. If California American Water fails to obtain any required approval, the Parties will meet and confer to consider how to implement a monitoring program that achieves the purposes of this Agreement, giving preference to programs that include in situ monitoring rather than intermittent sampling by boat. Prior to the implementation of any such revised monitoring program, and if California American Water is unable to obtain all necessary approvals for such revised monitoring program, California American Water shall undertake the following monitoring program (the "Monthly Monitoring Program"), which shall in those circumstances suffice to meet the requirements of this Agreement: (1) measure the Salinity, including the vertical Salinity profile, at each of the Monitoring Locations not less than once per calendar month and (2) share such data pursuant to Section 3.1(e) above.

3.2 Alternative Monitoring Programs

a. **Consideration of Proposed Alternative Monitoring Program.** If a public agency with jurisdiction over the Project requires a monitoring program that differs from the program set out in Section 3.1 above, California American Water shall promptly provide written notice of such requirement to the other Parties, including a proposal to implement such program or a combination of such and some portion of the Agreed Monitoring Program (a "Proposed Alternative Monitoring Program"). The Parties shall consider, and upon the request of any Party, meet to discuss, whether the Proposed Alternative Monitoring Program is equally or more protective of natural resources within the Sanctuary than the Agreed Monitoring Program or otherwise a suitable substitute for the Agreed Monitoring Program, with consideration given to the frequency or accuracy of monitoring and data collection of the Proposed Alternative Monitoring Program. Within thirty (30) days following receipt of California American Water's notice of the Proposed Alternative Monitoring Program, each Party may provide California American written notice of whether or not it approves the Proposed Alternative Monitoring Program. If every Party that responds to such notice informs California American Water that it approves the Proposed Alternative Monitoring Program, then such program shall be deemed the "Alternative Monitoring Program" that California American Water shall implement in lieu of the Agreed Monitoring Program. A Party that does not respond to California American Water's notice within the time set out above shall be deemed to have approved the Proposed Alternative Monitoring Program. The Parties hereby agree that adoption of an Alternative Monitoring Program pursuant to this Section 3.2(a) or Section

3.2(b) below does not constitute an amendment to this Agreement, but that such Alternative Monitoring Program shall be enforceable as if it were set out herein.

b. Disputes regarding the adequacy of a Proposed Alternative Monitoring Program shall be resolved as follows:

i. If one or more Parties inform California American Water by their written notice that they do not approve the Proposed Alternative Monitoring Program, then California American Water shall either continue to implement the Agreed Monitoring Program in addition to any monitoring program required by any public agency with jurisdiction over the Project or initiate dispute resolution by designating a scientist or engineer with expertise in brine discharge and diffusion into marine environments (a “Brine Expert”). The Party (or Parties) that does not approve the Proposed Alternative Monitoring Program shall also designate (jointly, if more than one Party does not approve the Proposed Alternative Monitoring Program) a single Brine Expert and the two designated Brine Experts shall promptly select a third Brine Expert (the “Deciding Brine Expert,” and along with the other two, the “Designated Brine Experts”). The Deciding Brine Expert shall determine whether the Proposed Alternative Monitoring Program will be deemed an Alternative Monitoring Program, with consideration given to the frequency or accuracy of monitoring and data collection of the Proposed Alternative Monitoring Program. Each Party shall have the opportunity to present its position and supporting arguments to the Deciding Brine Expert in writing; the Parties and the Deciding Brine Expert shall agree on a schedule for such briefing. The reasonable costs of the retention of all three Designated Brine Experts for the tasks assigned them under this Section 3.2(b)(i) shall be paid or reimbursed by California American Water. Any Party may retain at its own discretion and expense any Brine Expert (other than the Deciding Brine Expert) to assist in submitting comments to the Deciding Brine Expert.

ii. If the Deciding Brine Expert determines that the Proposed Alternative Monitoring Program should be deemed an Alternative Monitoring Program, then California American Water shall implement the Alternative Monitoring Program in lieu of the Agreed Monitoring Program. If the Deciding Brine Expert determines that the Proposed Alternative Monitoring Program should not be deemed an Alternative Monitoring Program, then California American Water shall continue to undertake the Agreed Monitoring Program in addition to any monitoring program required by any public agency with jurisdiction over the Project.

c. California American Water agrees to make commercially reasonable efforts to obtain any Commission approval required for the implementation of an Alternative Monitoring Program. The other Parties agree to support such efforts.

d. The Parties acknowledge that pending revisions to the DEIR may include analysis demonstrating that one or more of the Monitoring Locations or another aspect of the Agreed Monitoring Program should be revised. The Parties shall meet and confer promptly following the release of a revised and recirculated DEIR to determine whether its analysis warrants modification to the Agreed Monitoring Program. If the Parties agree to such modification, they will memorialize such modification by a memorandum signed by each Party and will inform the Commission by joint motion. If the Parties do not agree to such modification, any Party may individually move the Commission for a modification of the Agreed Monitoring Program. The Parties hereby agree that modification to the Agreed Monitoring Program pursuant to this Section 3.2(d) does not constitute an amendment to this Agreement, but that such Agreed Monitoring Program as modified shall be enforceable as if it were set out herein.

4. COMPLIANCE, ENFORCEMENT, AND MITIGATION

4.1 Salinity Standard.

a. The Project shall, from the Project Commencement Date and continuing through the life of the Project, comply with the Salinity standard of this Agreement. The Project shall be in compliance with the Salinity standard if the 24-hour average of measured Salinity (or, under the Monthly Monitoring Program, each monthly Salinity measurement) is no greater than (A) 2 parts per thousand greater than the Salinity at the Reference Location, or (B) any other Salinity or other brine constituent standard established by a public agency with jurisdiction over the Project, including a standard of significance applied to the Project pursuant to either CEQA or NEPA. The standard set out in clause (A) of this subsection shall be applied to Salinity at the Compliance Point Location and the Far Field Location.

b. If a public agency with jurisdiction over the Project imposes a Salinity standard on the Project that differs from that set out in clause (A) of Section 4.1(a) above, California American Water shall promptly notify the other Parties. The Parties shall meet and confer to determine whether that standard shall be incorporated into this Agreement. If the Parties fail to reach consensus, they shall use the dispute resolution mechanism set out in Section 5 below.

4.2 Exceedances.

BRINE DISCHARGE SETTLEMENT AGREEMENT (A.12-04-019)

a. If data collected from the Agreed or Alternative Monitoring Program shows an exceedance of the standard described in Section 4.1 at the Compliance Point Location, California American Water shall provide notice of such exceedance to all Parties and the Commission no more than ten (10) days following the collection of the data showing the exceedance. Promptly upon determining that an exceedance has occurred California American Water shall perform a thorough review to determine if the exceedance was caused entirely by a factor or factors other than the Project's normal brine discharge, such as but not limited to erroneous measurement or temporary or unusual circumstance related to plant operations or the marine environment, such that the exceedance should be excused. This review shall consider all relevant data, including without limitation brine discharge operational data, Salinity data from all four Monitoring Locations, the vertical profile data from all four Monitoring Locations, any re-calibration of the Salinity probes, and the duration of the exceedance. California American Water may, at its sole discretion, take additional measurements of Salinity or other brine constituents as a part of its review.

b. Not more than forty (40) days following the collection of the data showing an exceedance at the Compliance Point Location, California American Water shall provide a report of its review to the other Parties and the Commission. The report shall include a conclusion as to whether the exceedance should be excused. If the report determines that the exceedance should be excused, then each Party and the Commission may determine, in its sole discretion, whether it concurs with that conclusion and convey its determination to California American Water in writing. Any Party or the Commission that does not respond to the report in writing within twenty-one (21) days following its receipt of the report shall be deemed to have concurred with the report's conclusion.

c. If data collected from the Agreed or Alternative Monitoring Program shows an exceedance of the standard described in Section 4.1 at the Far Field Location while Salinity at the Compliance Point Location does not exceed the Salinity standard, the Parties shall promptly and in good faith meet and confer to develop a protocol for determining the Project's contribution to the exceedance, which shall include a deadline for providing the Parties a report regarding such contribution. California American Water shall implement such protocol. Following such implementation, California American Water shall issue a report stating its conclusion regarding the degree of the Project's contribution to the exceedance, including a statement expressing such degree as a percentage. The report shall make one of the following conclusions: (i) that the exceedance was caused entirely by a factor or factors other than the Project's normal brine discharge, such as but not limited to erroneous measurement or temporary or unusual circumstance related to plant operations or the marine environment, such that the exceedance should be excused, in which case the exceedance shall be deemed

excused; (ii) that the exceedance is not excused but that the Project was responsible for less than 51% of the total exceedance (i.e., the amount of Salinity greater than the standard described in Section 4.1), in which case the report shall conclude that the exceedance should be partially excused; or (iii) that the Project was responsible for 51% or more of the total exceedance, in which case the report shall conclude that the exceedance is not excused.

d. If a report provided pursuant to Section 4.2(b) or (c) determines that the exceedance should be excused or partially excused, then each Party and the Commission may determine, in its sole discretion, whether it concurs with that conclusion, and convey its determination to California American Water in writing.

i. In the event a Party or the Commission, based on a reasonable assessment of the report and any other evidence, declines to concur with a report finding that an exceedance at the Compliance Point Location should be excused, the Party or Commission's writing shall explain the reasons for its determination. California American Water may accept such written explanation or may opt to resolve the variance by, first, engaging in the dispute resolution mechanism described in Section 5 below (in attempts to resolve disputes under this Section 4.2(d)(i), the Commission shall be considered a "Party" for purposes of Section 5), and then, if no resolution is achieved, initiating a proceeding in a court of competent jurisdiction seeking declaratory relief as to the unreasonableness of the Party or Commission's non-concurrence.

ii. In the event of an exceedance at the Far Field Location, such writing shall state the Party or Commission's alternative determination among the options set out in Section 4.2(c). California American Water may accept such alternative determination or may opt to resolve the variance between its determination and that of the non-concurring Party or Commission through the procedure set out in Section 3.2(b), except that the Deciding Brine Expert shall determine the Project's degree of responsibility for the exceedance and make the appropriate determination among the options set out in Section 4.2(c).

iii. Any Party or the Commission that does not respond to the report in writing within twenty-one (21) days following its receipt of the report shall be deemed to have concurred with the report's conclusion.

4.3 Non-Compliance. California American Water shall be out of compliance with Salinity standard described in Section 4.1 if an exceedance of such Salinity standard is not excused or is partially excused, either because: (a) a report

prepared pursuant to Section 4.2(b) or (c) determines that an exceedance should not be excused or should be partially excused; (b) any Party or the Commission has, based on reasonable assessment, declined to concur with a report regarding an exceedance at the Compliance Point Location determining that such exceedance should be excused and such declined concurrence has not been resolved in favor of an excuse for exceedance pursuant to the process specified in Section 4.2(d)(i); or (c) any Party or the Commission makes an alternative determination pursuant to Section 4.2(d)(ii) and California American Water accepts, or the Deciding Brine Expert confirms, such determination.

4.4 Mitigation.

a. Upon a determination that the Project is out of compliance with the Salinity standard described in Section 4.1, California American Water shall promptly identify and report to the Parties mitigation measures that can further dilute the Project's brine to comply with the standard set out in Section 4.1. Such measures may include, without limitation:

i. Retrofitting the existing outfall to increase pressure at the diffuser ports and/or make other modifications, potentially including without limitation changing the angle, diameter, number, or elevation of the ports and providing additional treatment processes or facilities to MRWPCA to ensure that such retrofit does not compromise that agency's ability to comply with any permits regulating the outfall pursuant to the National Pollutant Discharge Elimination System;

ii. Constructing a new pressurized diffuser structure designed solely for the discharge of brine. This would likely have ports inclined vertically upwards and other design considerations (e.g., increased discharge velocity) to maximize dilution;

iii. Operating the desalination plant at a lower permeate-to-brine ratio in order to produce brine effluent at reduced concentration; or

iv. Achieving rapid dilution of brine through another discharge method or design that the Parties determine is mutually agreeable.

b. Following receipt of California American Water's list of potential mitigation measures, the Parties shall meet and confer to select a mutually agreeable measure, or set of measures, that will allow the water receiving the Project's discharge to meet the standard set out in Section 4.1, except that where an exceedance at the Far Field Location has been determined to be partially excused pursuant to the procedures set out in Sections 4.2(c) and 4.2(d)(ii) (for avoidance of doubt, because the Project's

contribution to the exceedance is greater than zero but less than 51%), the selected measure need be sufficient only to eliminate the Project's contribution to the total exceedance. The Parties shall give preference to measures that are cost effective, capable of timely implementation, and otherwise reasonable. The Parties shall not select any measure that would materially interfere with MRWPCA's ability to comply with any permits regulating the outfall pursuant to the National Pollutant Discharge Elimination System. If after sixty (60) days from the date of the collection of the data showing the exceedance, the Parties have not designated a mutually agreeable mitigation option, California American Water shall undertake either 4.4.a(i), 4.4.a(ii), or 4.4.a(iii) above.

c. California American Water shall use all commercially reasonable efforts to commence implementation of the selected mitigation option within four months of its selection.

d. The Parties agree to explore, immediately upon the execution of this Agreement, the best mechanisms to expedite the time required for Commission approval of the selected mitigation. In particular, the Parties agree to investigate cost recovery mechanisms for the mitigation measures, including the filing of a Tier 2 advice letter, which the Commission may approve, as part of the CPCN under consideration in this proceeding. The Parties may request modification of this Agreement to include such ratemaking provisions.

4.5 Breach. If a Party breaches any of its obligations under this Agreement, the Party to whom the obligation was owed may notify the breaching Party, in writing, of such breach. The Parties shall then promptly engage in the dispute resolution mechanism described in Section 5 below, concerning the appropriate means to remedy such alleged breach. If the alleged breach is not waived by all Parties or resolved pursuant to the dispute resolution mechanism described in Section 5 below, the Party or Parties claiming the breach may initiate proceedings in a court of competent jurisdiction seeking injunctive relief or specific performance to the extent permitted by law. For avoidance of doubt, non-compliance as described in Section 4.3 is not in itself a breach of an obligation under the Agreement.

4.6 Remedies. The Parties have determined that (1) monetary damages are generally inappropriate as remedy for breach of this Agreement, (2) it would be extremely difficult and impractical to fix or determine the actual damages suffered by any Party as a result of a breach, and (3) equitable damages and remedies at law not including damages are the appropriate remedies for enforcement of this Agreement. No Party would have entered into this Agreement if it were to be liable in damages under this Agreement. Consequently, the Parties agree that equitable damages and remedies at law not including damages shall be the sole remedies available to each Party for breach of this Agreement by another Party.

5. DISPUTE RESOLUTION.

5.1 If a dispute arises concerning any controversy or claim arising out of or relating to this Agreement (except as set forth in Sections 3.2(b) and 4.2(d)) or the breach thereof or relating to its application or interpretation, including without limitation those types of disputes expressly directed to this mechanism in the Agreement, the aggrieved Party will notify the other Parties of the dispute in writing. If the Parties fail to resolve the dispute within fifteen (15) days after delivery of such notice, each Party will promptly nominate a senior officer or agent of its organization to meet at any mutually-agreed time and location to resolve the dispute. The Parties shall use commercially reasonable efforts to reach a just and equitable solution satisfactory to the Parties. If the Parties are unable to resolve the dispute within thirty (30) days after the initial notice of the dispute, any Party may request the dispute be submitted to mediation, pursuant to Section 5.2. The time periods set forth in this Section 5.1 are subject to extension as agreed to by the Parties.

5.2 If a dispute is not resolved pursuant to Section 5.1 the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation initiated and conducted under the applicable rules of the American Arbitration Association in effect as of the Effective Date or other rules agreed to in writing by the Parties, before having recourse in a court of law. The Parties shall select a mediator no more than fifteen (15) days following the running of the thirty-day deadline set out in Section 5.1, unless the Parties, each in their sole discretion, agree to extend the deadline. Each Party shall bear its own legal expenses, and the expenses of witnesses for either side shall be paid by the Party producing such witnesses. All expenses of the mediator, including required travel, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be paid or reimbursed by California American Water. Any resultant agreements from mediation shall be documented in writing. All mediation proceedings, results, and documentation, including without limitation any materials prepared or submitted or any positions taken by or on behalf of either Party, shall be confidential and inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Codes sections 1115 through 1128), unless such admission is otherwise agreed upon in writing by the Parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery. If the dispute is not resolved within thirty (30) days after selection of the mediator, the mediation shall be deemed closed and the dispute deemed unresolved unless the Parties, each in its sole discretion, agree to extend the mediation period until a date certain; the Parties may, each in its sole discretion, agree to any number of such extensions but such extensions shall always be until a date certain.

6. GENERAL

6.1 This Agreement reflects a settlement and compromise of putative claims and remedies of the Parties. The Parties have therefore entered into each

stipulation contained in the Agreement on the basis that its approval by the Commission not be construed as an admission or concession by any Party regarding any fact or matter of law in dispute in this proceeding.

6.2 The Parties agree that no signatory to this Agreement assumes any personal liability as a result of the Agreement.

6.3 Each of the Parties hereto and their respective counsel and advocates have contributed to the preparation of this Agreement. Accordingly, the Parties agree that no provision of this Agreement shall be construed against any Party because that Party or its counsel drafted the provision.

6.4 This Agreement supersedes any prior representations by the Parties regarding each stipulation contained herein.

6.5 The Parties agree to use commercially reasonable efforts to obtain Commission approval of this Agreement. The Parties shall request that the Commission approve the Agreement without change and find the Agreement to be reasonable, consistent with the law, and in the public interest.

6.6 The Parties agree that this Agreement is an integrated agreement such that if the Commission rejects or modifies any portion of this Agreement, the Parties request the Commission to provide a reasonable period for the Parties to consider and respond to such modification. In that event, each Party shall determine no later than two business days before the deadline imposed by the Commission for acceptance of the modification whether it will accept the modification and shall notify the other Parties in writing of its determination. Such acceptance may not be unreasonably withheld. If any Party declines to accept the Commission's modification, the other Parties may still accept the modification and request the Commission to approve the revised Agreement in the absence of the agreement of the Party or Parties who decline to accept the Commission's modification; provided, however, that if California American Water or the Surfrider Foundation is among the Parties who decline to accept the Commission's modification, the Agreement shall be void and the Parties will request that the Commission establish a procedural schedule to address the disputed issues.

6.7 As between the Parties, this Agreement may be amended or changed only by a written agreement signed by all of the Parties, except that modification made by the Commission, the adoption of an Alternative Monitoring Program pursuant to Section 3.2, or the modification of the Agreed Monitoring Program pursuant to Section 3.2(d) shall not be considered amendments to the Agreement.

6.8 If the Commission does not approve this Agreement, Surfrider reserves its rights to challenge the Project on any ground available, including the impacts of brine discharged from the Project, in any appropriate forum, Section 1 and any other provision of the Agreement notwithstanding.

6.9 Among other things, this Agreement helps to define a stable and finite project description that will facilitate the Commission's completion of CEQA review for the Project. The legal effectiveness of this Agreement is contingent on the completion of CEQA review and does not irretrievably commit the Parties to carrying out any physical activities that would be required for California American Water to meet its obligations under this Agreement. The Commission, as the lead agency under CEQA, the National Oceanic and Atmospheric Administration/ Monterey Bay National Marine Sanctuary, as the lead agency under NEPA, and all responsible agencies will retain full discretion with respect to deciding whether to approve or disapprove any commitments necessary or convenient for California American Water to address matters relating to the discharge of brine from the Project, including full discretion to consider, approve or disapprove alternatives, and also including full discretion to modify commitments and/or adopt other mitigation measures relating to brine discharge to avoid or reduce any significant adverse physical environmental effects from the activities that are within their jurisdiction.

6.10 Surfrider has made a substantial contribution to this Agreement and to the resolution of other issues in the Proceeding.

6.11 This Agreement does not impact the terms of sections 3.1(a) of the document known as the Large Settlement Agreement.

6.12 This Agreement may be executed in any number of counterparts.

June 14, 2016

CALIFORNIA AMERICAN WATER COMPANY

By: 

Robert MacLean, President

June __, 2016

COALITION OF PENINSULA BUSINESSES

By: _____

Bob McKenzie

June __, 2016

MONTEREY PENINSULA REGIONAL WATER
AUTHORITY

By: _____

Bill Kampe, Interim President

June __, 2016

MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT

By: _____

David Stoldt, General Manager

June __, 2016

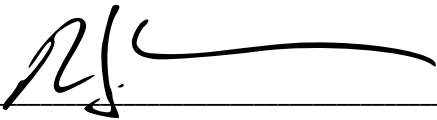
CALIFORNIA AMERICAN WATER COMPANY

By: _____

Robert MacLean, President

June 14, 2016

COALITION OF PENINSULA BUSINESSES

By:  _____

Bob McKenzie

June __, 2016

MONTEREY PENINSULA REGIONAL WATER
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Bill Kampe, Interim President

June __, 2016

MONTEREY PENINSULA WATER MANAGEMENT
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By: _____

David Stoldt, General Manager

June __, 2016

CALIFORNIA AMERICAN WATER COMPANY

By: _____

Robert MacLean, President

June __, 2016

COALITION OF PENINSULA BUSINESSES

By: _____

Bob McKenzie

June ¹⁴ __, 2016

MONTEREY PENINSULA REGIONAL WATER
AUTHORITY

By: Bill Kampe

Bill Kampe, Interim President

June __, 2016

MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT

By: _____

David Stoldt, General Manager

June 14, 2016

MONTEREY REGIONAL WATER POLLUTION
CONTROL AGENCY

By: _____

Paul A. Sciuto, General Manager

June __, 2016

PLANNING AND CONSERVATION LEAGUE

By: _____

Roger Moore, Counsel

June __, 2016

SURFRIDER FOUNDATION

By: _____

Gabriel M.B. Ross, Counsel

June __, 2016

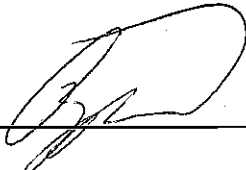
MONTEREY REGIONAL WATER POLLUTION
CONTROL AGENCY

By: _____

Paul Sciuto, General Manager

June 14, 2016

PLANNING AND CONSERVATION LEAGUE

By:  _____

Roger Moore, Counsel

June __, 2016

SURFRIDER FOUNDATION

By: _____

Gabriel M.B. Ross, Counsel

June __, 2016

MONTEREY REGIONAL WATER POLLUTION
CONTROL AGENCY

By: _____

Paul Sciuto, General Manager

June __, 2016

PLANNING AND CONSERVATION LEAGUE

By: _____

Roger Moore, Counsel

June 14, 2016

SURFRIDER FOUNDATION

By:  _____

Gabriel M.B. Ross, Counsel